8255443/2023/SER-A-GAD01

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

GAD - Andhra Pradesh Public Service Commission – Amendment to Regulation 17 of the Andhra Pradesh Public Service Commission Regulations, 1963 – Consultation of Andhra Pradesh Public Service Commission before imposing certain major penalties – Amendments – Orders – Notification – Issued.

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GENERAL ADMINISTRATION (SER.A) DEPARTMENT

G.O.Ms.No.124. **Dated:04.12.2023.**

Read the following:-

1. G.O.Ms.No.489, General Administration (Rules) Department, dated the 23rd April, 1963
2. Minutes of the Secretaries Conference held on 10.7.2019 communicated by GA(GLC) Dept. in U.O.Note No. GAD01/272/2019, dt.16.7.2019
3. Govt. Letter No.941017/Ser.A/2019 dt.20.09.2019
4. From the Secretary, Andhra Pradesh Public Service Commission Letter No.495/R&R/2019, dt.29.10.2019
5. Govt. Letter No.941017/Ser.A/2019 dt.13.11.2019
6. From the Secretary, Andhra Pradesh Public Service Commission Letter No. 495/R&R/2019, dt.10.1.2020
7. Govt Lr.No.941017/Ser.A/2019 dt.9.11.2022 addressed to Learned Advocate General.
8. From the Learned Advocate General, AP High Court Buildings, Amaravati Lr.No.82/2023, dt.23.2.2023.

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ORDER:-

In the meeting of the Secretaries Conference held on 10.07.2019, it has been recommended that the Andhra Pradesh Public Service Commission should be consulted in respect of removal, dismissal and 100% cut in pension cases only. However, conviction cases, other proposed punishments, Andhra Pradesh Public Service Commission need not be consulted and accordingly, the Regulation-17 of Andhra Pradesh Public Service Commission may be amended as recommended by second Administrative Reforms Commission.

2. Accordingly, in the Government letter third read above, the Secretary, Andhra Pradesh Public Service Commission was requested to obtain the Commission's views on the above recommendation and furnish to Government immediately, for taking necessary further action in the matter.

3. In the letter fourth read above, the Secretary, Andhra Pradesh Public Service Commission has informed that the Hon'ble Commission has opined that the proposed amendment to regulation 17 in the Commission's Regulations and Rules of Procedure is not conformable with the provisions of the Article 320 (3) of the Constitution of India.

4. Government after examination of the views of the Andhra Pradesh Public Service Commission, in the reference fifth read above, the Secretary, Andhra Pradesh Public Service Commission was again requested to obtain views of the Commission and furnish necessary proposals to Government for taking necessary further action in the matter.

P.T.O.

5. In the letter sixth read above, the Secretary, Andhra Pradesh Public Service Commission has reiterated its earlier stance stated in their letter dated:29.10.2019.

6. Government after examination of the matter consider that, the Article 320(3)(C) of the Constitution of India reads as follows:

> "The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted:
>
> On all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters ."

7. In Union of India (UOI) and Ors. vs. T.V. Patel (2007(6)SCALE 9) the Hon'ble Supreme Court of India held that,-

> "In view of the law settled by the Constitution Bench of this Court in the case of Srivastava (supra) we hold that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law."

8. The above position has been confirmed again by the Hon'ble Supreme Court of India in Union of India and another Vs. S.K. Kapoor (2011 (3) SCALE 586).

9. In the Second Administrative Reforms Commission Report, the Commission has taken the view that consultation with the UPSC should be mandatory only in case leading to the likely dismissal of a Government servant from service and all other types of disciplinary cases should be exempted from the UPSC's purview.

10. Government have consulted the Learned Advocate General in the reference seventh read above and requested to furnish his considered opinion on the proposal to consult the Andhra Pradesh Public Service Commission in respect of the cases for imposition of major penalties against Government servants. In the letter eighth read above, the Learned Advocate General has furnished his considered opinion as follows:-

> "It is pertinent to note that the issue of consulting UPSC was considered in State of UP v. Manbodhan Lal Srivatsava reported in AIR 1957 SC 912. The Hon'ble Apex Court held that the provisions under Article 320 (3) (c) are not mandatory and binding on the appropriate authority. In Union of India v. T.V. Patel reported in (2007) 4 SCC 785, the Hon'ble Supreme Court held that Article 320 (3) (c) are not mandatory and do not confer any right on the public servant for a cause of action in the court.
>
> From the above judgments it is clear that consultation of the Commission is not mandatory. The non-consultation with the Commission by itself will not vitiate the proceedings in the absence of specific clause in the regulations."

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11. Finally, the Learned Advocate General, High Court of Andhra Pradesh has opined that it is the discretion of the executive whether or not to refer the matter to the Commission. It is only an internal mechanism to guide the actions taken by the executive.

12. In the above circumstances, the Government after careful examination of the matter hereby direct that the Andhra Pradesh Public Service Commission shall be consulted only for imposition of the following penalties under A.P.C.S.(CC&A) Rules, 1991 and A.P. Revised Pension Rules, 1980 and decided to amend the Regulation-17 of the Andhra Pradesh Service Commission in respect of the following major penalties:

a) Compulsory retirement,

b) Removal from service which shall not be a disqualification for future employment under the Government

c) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government and

d) Imposition of penalty withholding of entire pension or gratuity or both against retired Government servants only".

13. In respect of imposition of the penalties specified in APCS (CC&A) Rules, 1991 and conviction cases and other than those mentioned above, Government directed that the Andhra Pradesh Public Service Commission shall not be consulted.

14. The Government also direct that all the competent authorities that in respect of Disciplinary proceedings, before imposing such penalty of withholding of entire pension or gratuity or both, enquiry should be done impartially and as per laid down procedure completely with in a time frame. Otherwise intentional punishments may cause the loss of property i.e., pension of the employee for his previous service humbly done. Appropriate percentage for the guilty found should be decided and imposed by the authority or proper percentage to be fixed to avoid to heavy or too light to the guilty found.

15. All the Departments of Andhra Pradesh Secretariat/ Heads of Departments /District Collectors and other competent authorities shall take necessary action in the matter accordingly.

16. Consequently, necessary amendment to the existing proviso 1 to Rule 9(1) of the A.P. Revised Pension Rules, 1980 shall be issued by the Finance Department substituting with the following sentences:-

"Provided that the Andhra Pradesh Public Service Commission shall be consulted before any final orders are passed imposing penalty of withholding of entire pension or gratuity or both. However, consultation with Andhra Pradesh Public Service Commission is not necessary, when the pensioner is found guilty in any judicial proceedings".

17. This order issues with the concurrence of Finance department vide their Finance U.O.No.FIN01-HROMISC/118/2023-HR-III. (Computer No:2257705)

18. This order is available in the internet and can be accessed at AP e-Gazette website: https://apegazette.cgg.gov.in

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19. Accordingly, the following notification will be published in the Andhra Pradesh Gazette:

NOTIFICATION

In exercise of the powers conferred by Article 318 and the proviso to Clause (3) of Article 320 of the Constitution of India, the Governor of Andhra Pradesh hereby makes the following amendments to the Andhra Pradesh Public Service Commission Regulations, 1963 issued in G.O.Ms.No.489, General Administration (Rules) Department, dated the 23rd April, 1963 and as subsequently amended from time to time.

AMENDMENTS

In the said Regulations, in Regulation 17, in Sub-Regulation (1)

(I). in clause (a),

(1) the Sub-clause (i), (ii) and (vi) shall be omitted.
(2) after sub-clause(vi) the following shall be added namely,-

"(vii) Withholding of entire pension or gratuity or both"

(II). The clause (e) shall be omitted.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr. K. S. JAWAHAR REDDY
CHIEF SECRETARY TO GOVERNMENT

To
The Commissioner of Printing and Stores Purchase, Vijayawada (2 copies) (for publication of the notification in the A.P. Gazette and to send 50 copies to the Government).
All Departments in Secretariat.
The Secretary, Andhra Pradesh Public Service Commission, Vijayawada.
The Finance (HR.III-Pension, GPF) Department.
The Secretary, Andhra Pradesh Vigilance Commission.
All Heads of Departments.
All the District Collectors in the State.
All the District Judges in the State.

Copy to:
The Principal Accountant General (A & E), A.P. Vijayawada.
The Registrar General, AP High Court, Nelapadu, Arnaravati.
The Administrative Officer, G.P office, AP High Court Buildings, Nelapadu, Amaravati.
The Special GP, O/o. Learned Advocate General, AP High Court, Nelapadu, Amaravati.
P.S. to Spl C.S. to C.M.
P.S. to C.S.
P.S. to Secretary to Govt. (Ser.), GAD.
The Law (C)Department.

//FORWARDED:: BY ORDER//

SECTION OFFICER